The Corporation Trust Company Journal

DECEMBER—FEBRUARY
1913-14

No. 43

CONTENTS

Issued by

The Corporation Trust Company System

New York Chicago Boston Philadelphia Pittsburgh St. Louis

The Corporation Trust Company's Income Tax Service

This Service has met a great need of attorneys.

Its popularity has exceeded our expectations.

Any one of our offices will gladly furnish full particulars as to its cost and scope.

The Corporation Trust Company's Proposed Federal Reserve Act Service

will be conducted along lines similar to our Income Tax Service.

It will report promptly all official regulations of the Federal Reserve Board.

The data will be prepared in suitable form for permanent record and quick reference.

If you are interested in the subject, and wish to receive further particulars as to the cost and scope of this service, please sign the circular enclosed with this number of the Journal.

IMPORTANT NOTICE

THE ANNUAL RETURN OF NET INCOME required by the Federal Income Tax Law must be filed by all corporations on or before March 1, unless the corporation has obtained permission to file the return for its fiscal year.

An extension of time for filing this return, not exceeding thirty days, may be obtained in case of absence or sickness of an officer required to verify the return, but application for such extension should be made to the collector before March 1.

Forms are provided by the government as follows:

No. 1030 for Insurance Companies
" 1031 " Banks and Other Financial Institutions
" 1032 " Public Service Corporations
" 1033 " Manufacturing Corporations
" 1034 " Mercantile Corporations
" 1035 " Miscellaneous Corporations
" 1013 is a form of annual list return of the amount of normal income tax withheld at the source by corporations from interest upon bonds and mortgages or deeds of trust or other similar obligations.
" 1042 is a form of annual list return of the amount of normal income tax withheld at the source on salaries, wages, rent, etc.

Copies of these forms may be obtained from any collector of internal revenue.

Returns should be filed with the collector of the district in which the corporation has its principal place of business. "Principal place of business" means the place where the books of account and other data to be used in preparing the return of net income are ordinarily kept.

The government has issued a pamphlet of one hundred and twenty seven pages containing a copy of the law and regulations containing instructions relative to the preparation of returns, etc., designed to assist both the taxpayer and the officers charged with the collection of the tax. This publication is called "Regulation No. 33." Copies may be obtained at any Internal Revenue Collector's office or by addressing the Superintendent of Documents, Washington, D. C. In the latter case a charge of fifteen cents per copy is made, which amount should accompany all requests. On account of the length of these regulations they are not reprinted in full in the Journal.

THE FOREIGN CORPORATION ACT OF ARKANSAS generally known as the "Wingo Act" (Laws 1907, p. 744) was held to be unconstitutional February, 1910, by the United States Supreme Court in so far as it attempted to impose upon a foreign corporation, as a prerequisite to doing intrastate business in Arkansas, the payment of fees based upon the whole of its capital stock. Ludwig v. Western Union Telegraph Co., 216 U. S. 146. (See Journal Number 17.) It does not follow, however, that the whole act is void so as to revive the previous law (Act of May 23, 1901). The first section of the Wingo Act is valid and a compliance with it authorizes a corporation to make contracts in the state and to bring suit in the courts of the state to enforce them. Roberts v. Chatwin, et al, 158 S. W. 497.

IN CALIFORNIA STOCKHOLDERS ARE LIABLE for the difference between the value of the property sold to the corporation and the par value of the stock issued to them in exchange therefor when the value of the property is known at the time of the transaction to be less than par of the stock. It is immaterial that the directors in issuing the stock act in good faith and honestly believe that the property can and will be developed to a value equal to that of the stock. The act is a constructive fraud as to creditors. It appears, however, that if the corporation, at the time of obtaining credit, makes a full disclosure to the creditor of the dif-

ference between the par value of the stock and the value of the property, that might be a complete defense to a suit by the creditor to enforce the liability. Also an honest mistake, innocently made, as to the value of the property would not render the stockholders liable under this rule, although they would still be liable under the statute, Civil Code Sec. 322, for their proportionate share of all the debts of the corporation. The "speculative value" rule often applied to issues of stock for mining claims was held not to be applicable to the case at bar and it is uncertain to what extent the California Courts would adopt this rule in any event. R. H. Herron Co. v. Shaw et al., 133 Pac. 488.

LIABILITY OF STOCKHOLDERS OF A FOREIGN CORPORATION IN CALIFORNIA. The United States Supreme Court has just held that a citizen of New York, stockholder of an Arizona corporation doing business in California is personally liable to the creditors of the corporation for a proportionate share of the debts of the corporation. Frank N. Thomas v. Conrad H. Matthiessen, decided February 2, 1914, not yet reported. A brief review of this important case and the authorities therein cited is given below.

The Civil Code of California, Section 322, reads in part as follows:

"Each stockholder of a corporation is individually and personally liable for such proportion of all its debts and liabilities contracted or incurred during the time he was a stockholder as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation. . . . The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred; and such liability is not released by any subsequent transfer of stock. . . . The liability of each stockholder of a corporation formed under the laws of any other state or territory of the United States, or of any foreign country, and doing business within this state, is the same as the liability of a stockholder of a corporation created under the constitution and laws of this state."

In an earlier case under this statute, Pinney v. Nelson, decided December 2, 1901, 183 U. S. 144, a corporation had been organized under the laws of Colorado by residents and citizens of California. The charter provided that the "company is created for the purpose of carrying on part of its business beyond the limits of the State of Colorado, . . . and the principal plant and principal operations of said company beyond the limits of the state shall be in Los Angeles County, State of California, and such other places in the State of California as may be decided upon by the board of directors." There the United States Supreme Court held that although ordinarily a stockholder's liability is controlled by the laws of the state in which the incorporation is had, when a corporation is organized in one state, and by the express terms of its charter is created for doing business in another state, and business is done in that state, it must be assumed that the charter contract was made with reference to its laws; and the liabilities which those laws impose will attend the transaction of such business.

In a later case, Risdon Iron and Locomotive Works v. Furness, 1 K. B. 49, the English Court of Appeal held that a charter provision authorizing an English company to do business "in the United States of America, Australia and elsewhere" and empowering the board of directors "to do all such other things and take such steps as may be now or at any time become necessary so as to comply with any statutory enactment, rule, or regulation in any country, colony or place where the company may carry on business, or where all or any part of the property and undertaking of the company may be situate" could not be treated as an authority by stockholders of the company to the company, or its directors or agents to carry on business in California on terms that would make the stockholders liable beyond the limited liability under the English law.

In the case just decided, the Wentworth Hotel Company was organized under the laws of Arizona. The charter authorized the company to do business anywhere but did not expressly provide that its business should

be carried on in California, except by a provision that its principal place of business in Arizona should be at Tucson and the principal place of business outside of Arizona should be at Los Angeles, or at Pasadena, California, at which place meetings of the stockholders or directors might be held. Before incorporation, the defendant, in New York, signed a writing reciting the intent of the subscribers to form a corporation in Arizona for the purpose of acquiring land and building a hotel near Pasadena. At the time of subscribing, the defendant agreed with the company that he and the other stockholders should be exempt from personal liability. Such exemption was expressed also in the Certificate of Incorporation. The United States Supreme Court holds:

(a) That without authority from the stockholder a corporation cannot make him answerable in a way not contemplated by the charter.

(b) Although a charter provision may expressly limit a stockholder's liability, the stockholders may nevertheless assent to a greater liability and may give such assent outside of the charter.

(c) In this case the defendant expressed in writing his wish that the corporation should set up a hotel in California. It was the main object for which the parties came together. He knew that California had laws and he took his risk of what they might be when he gave his assent to doing business there. His words cannot be interpreted as giving merely a conditional assent, and the case comes within the rule laid down in Pinney v. Nelson.

(d) By force of the California statute the defendant as stockholder through the corporation as his agent came within the jurisdiction of the state when the debt was created therein and the liability may be enforced in other states.

For the purpose of deciding this case the court assumed, but expressed no opinion on the point, that a provision in the charter for doing business in other states without any express reference to a possible difference in their laws would not be enough to hold that the stockholders had assented to a greater liability than that expressed in the charter of the company.

FAILURE TO FILE THE ANNUAL REPORT IN COLORADO, required by Rev. Stats. 1908, Sec. 911, renders the officers and directors personally liable for debts for the preceding year. This statutory provision has again been held by the Colorado Court of Appeals to be penal in its nature and must be strictly construed. Therefore, a judgment recovered against the corporation after the report had been filed on a cause of action arising during the period of default cannot be enforced against the officers and directors personally. The court construes the words "preceding year" in the statute to mean the twelve months ending sixty days after January 1, and not the preceding calendar year. It also construes the word "debt" to mean an unconditional promise to pay a fixed sum at a specified time and not to be synonymous with "obligation" or to include liability for torts. Bovee et al. v. Boyle, 136 Pac. 467. The Supreme Court of Kansas has held that this statute is not penal in such sense as to prevent the courts of a sister state from enforcing the penalty against officers and directors. 124 Pac. 414. (See Journal No. 33.)

A SUBSCRIBER TO STOCK IN A COLORADO CORPORATION has all the rights of a stockholder whether his stock be paid in full or not. He becomes a stockholder by the mere act of subscription. A by-law limiting the right to vote to such stock as has been paid in full is void. Lilylands Canal & Reservoir Co. v. Wood, 136 Pac. 1026.

THE CONNECTICUT WORKMEN'S COMPENSATION ACT (Chapter 138, Public Acts of 1913) became effective January 1, 1914. The administration of the act is vested in five Commissioners, one for each Congressional District. Issues arising are tried before the proper Commissioner, but an appeal lies from his decision to the Superior Court.

It is provided that every contract of employment shall be conclusively presumed to include a mutual agreement between employer and employee, which is not to be affected by any other contract, expressed or implied, or by any rule or regulation, to accept the compensation provisions of the act, unless either the one or the other by written stipulation in the contract refuses to accept the same. On notice by either party to the other and to the Compensation Commissioner of the District in which the employee is employed, acceptance may be withdrawn or renewed. If the employer elects not to be bound by the new compensation provisions, contributory negligence, the fellow servant rule and the doctrine of assumption of risk may not be pleaded by him as defences in a suit for damages by an employee, but if it is the employee who so elects not to be bound then such defences may be pleaded by the employer. In no other case are these defences permissible but no compensation is to be paid when injury is caused by the wilful and serious misconduct of the injured employee or by his intoxication. No compensation is payable on account of any injury which does not incapacitate the injured employee for a period of more than two weeks but medical and surgical aid is to be supplied for thirty days immediately following the injury.

In case of death an amount equal to one-half of average weekly wages but not less than $5.00 nor more than $10.00 weekly is paid to those who had been totally dependent on deceased employee, i. e., wife or husband and children under 18 years of age or children incapable of self-support because of physical or mental deficiencies. Dependence ceases on remarriage or becoming of age. In case there is no one totally dependent upon the deceased employee a weekly compensation is to be paid not exceeding that payable to total dependents and of such proportionate sum as may be determined according to the measure of dependence. A compensation equal to one-half of average weekly wage but between the $5.00 and $10.00 limits, is paid during total incapacity for not longer than 520 weeks. Compensation for partial incapacity is at the rate of one-half of average weekly wage, but not to exceed $10.00, for varying periods of time for specified injuries as per schedule, but such payments are not in any case to continue for more than 312 weeks. Notice of injury is to be given to employer but failure to give notice is no bar to action unless the employer shows that he was ignorant of the injury. Employer and employee may reach an agreement in regard to compensation, which being submitted to Commissioner may be approved by him and become as binding as an award by him.

If after injury, employer and employee fail to reach an agreement as to compensation, Commissioner is notified and he holds hearing and makes award. Single lump sum payment in lieu of weekly payments may be ordered by Commissioner. Employer may enter into agreement with employees, subject to approval of Commissioner, for a substitute system of compensation but no agreement shall be approved if contributions by employees are contemplated unless such agreement confers additional benefits. Unless employer can satisfy the Commissioner of his ability to pay compensation he must either file security or insure his full liability in a company authorized to accept such risks in the state. The last part of the act provides for the establishing and maintaining by employers in similar trades or businesses of mutual associations to insure their liabilities.

THE ANNUAL LICENSE FEE IN IDAHO is based upon the authorized capital stock of domestic and foreign corporations. The Northern Pacific Railway Company, doing both interstate and intrastate business in Idaho sought to have the tax declared invalid on the ground that the Statute imposing it was unconstitutional. The Supreme Court of Idaho has upheld its validity. The corporation based its contention upon the decisions of the United States Supreme Court in the Western Union and Pullman Company cases which declared similar laws of Arkansas and Kansas unconstitutional on the ground that the taxes in those states, imposed upon the authorized capital stock, attempted to tax property represented by such capital stock beyond the jurisdiction of the taxing state and unduly burdened interstate commerce. (216 U. S. pp. 1, 56 and 146.—See Journal No. 17.) The Court cited the later case of S. S. White

Dental Mfg. Co. v. Massachusetts decided by the United States Supreme Court on November 3, 1913. In brief, the Idaho Court holds that the tax in question is not a property tax but an excise tax, is not imposed upon interstate commerce but is for the privilege of doing an intrastate business and is properly measured by the authorized capital stock of the corporation, that the maximum tax charged for that privilege by the act is only $150 and that this small amount cannot be said to burden the interstate commerce of a corporation such as the plaintiff. It calls attention, by way of contrast, to the maximum tax in Massachusetts, which is $2,000 and remarks that if the United States Supreme Court did not consider this a burden on interstate commerce much less can it so consider the smaller amount in Idaho. In reconciling the decisions of the United States Supreme Court in the Kansas cases and the Massachusetts case, the Idaho Court calls attention to the fact that the amount of the license fee laid upon corporations by the Kansas statute was so exorbitant and unreasonable that the companies would not likely have been able to pay the same, and that the amount of the tax rather than the fact that it was measured by the authorized capital had the effect of interfering with interstate commerce and taking the property of the companies without due process of law. In its opinion the United States Supreme Court intends to determine the **effect** of each statute of this kind as it will apply in **actual practice,** rather than decide it upon the theory of any apprehended dangers which might flow from other similar legislation which might prove more exacting. Northern Pac. Ry. Co. v. Gifford, 136 Pac. 1131.

A FOREIGN CORPORATION IN IDAHO may be sued in any county of the State. The fact that it has appointed an agent for service of process in one county under the provisions of Sec. 2792 of the Revised Codes of Idaho, does not give it the right to have actions against it tried in that county. Smith et al. v. Inter-Mountain Auto Co., Limited, 136 Pac. 1125.

CONSOLIDATION OF CORPORATIONS IN ILLINOIS is accomplished under a statutory provision which simply authorizes such consolidation. (Laws of 1871-72, p. 487, as amended by Laws 1887, p. 132, and Laws 1889, p. 95.) The Supreme Court of Illinois has recently held that the effect of a consolidation is to create a new corporation, the constituent corporations ceasing to exist. Therefore upon consolidation the fee to be paid the Secretary of State must be based upon the entire capital stock of the corporation formed upon the consolidation and not merely upon the amount by which the capital stock of one of the constituent corporations was increased. The fact that the consolidation is in the form and language of a merger does not affect the question, as the statute does not contain authority for the merger of one corporation into another or for the purchase of the property, stock or franchises of one corporation by another. Chicago Title & Trust Co. v. Doyle, 102 N. E. 790.

THE LAWS OF KENTUCKY require every corporation, except foreign insurance companies, carrying on business in the state to file a statement of the location of its office or offices in the state and the names of its agent or agents thereat upon whom process can be served. (Ky. Stats., Sec. 571.) This Section also declares that it shall not be lawful for any corporation to carry on any business in the state until such statement is filed and prescribes a fine of not less than $100 nor more than $1,000 for each offense. Contracts entered into before complying with the statute are not expressly declared to be void or unenforceable, but the Court of Appeals of Kentucky holds that the statute in effect makes all such contracts void because it declares it unlawful to do business before compliance with its terms. Oliver Co. v. Louisville Realty Co., 161 S. W. 570. In reaching its conclusion the Court found it necessary to overrule a previous decision of fifteen years' standing (Johnson v. Mason Lodge, 108 Ky. 838), in which it had been held by the same court that failure to comply with Section 571 did not defeat a corporation's right to enforce its contracts. It is important to note that this section applies with equal force to domestic corporations.

FOREIGN CORPORATIONS HAVING A USUAL PLACE OF BUSINESS IN MASSACHUSETTS are required to comply with the foreign corporation laws of that state and "no action shall be maintained or recovery had in any of the courts of this Commonwealth by any such foreign corporation so long as it fails to comply with" the requirements referred to. The Supreme Judicial Court of Massachusetts holds that the non-compliance with the statute by a foreign corporation which conducted a theatre on premises leased by it in the state was properly pleaded and that it was not entitled to maintain its suit unless and until it should comply with the law. E. & G. Theatre Co. v. Greene et ux., N. E. 301.

THE RIGHT OF A STATE TO TAX INTANGIBLE PERSONAL PROPERTY in the hands of its residents, when such property happens to be shares of stock of foreign corporations doing no business and having no property in the taxing state was recently upheld by the United States Supreme Court in the case of Hawley v. The City of Malden (Massachusetts), decided January 5, 1914, 34 S. Ct. 201. It was contended that the shares were not within the jurisdiction of the state and that the state had no right to tax property of its citizens when it is permanently located in another jurisdiction. The Court points out that while a franchise granted by one state is not taxable in another for the reason that the franchise is an incorporeal hereditament and hence has its legal situs in the state which grants it, shares of stock fall within a different category. They are in the nature of contract rights or choses in action. As such, in the absence of legislation prescribing a different rule, they are appropriately related to the person of the owner, and, being held by him at his domicile, constitute property with respect to which he is under obligation to contribute to the support of the government whose protection he enjoys.

THE SO-CALLED "BLUE SKY LAW" OF MICHIGAN has been declared invalid by the District Court of the United States for the eastern district of Michigan, Alabama & New Orleans Transportation Co. v. Doyle et al., decided Jan. 28, 1914, not yet reported. The opinion of the court covers five cases on motion for preliminary injunction against the members of the Michigan Securities Commission.

This act is one of a number passed by various state legislatures following the lead of Kansas, which enacted a law in 1911 to regulate and control the sale of securities and to prevent the exploitation of fraudulent investment and speculative propositions. While the court commends the laudable and remedial purposes of the act, it holds that the legislature disregarded the fundamental limitations imposed by the federal constitution in the following respects:

(1) The act deprives the plaintiffs of their property and liberty without due process of law in that it in effect prohibits the sale of any promissory note, bond, stock, contract or other security unless the Commission thinks it is worth the price which is asked, or if the Commission thinks that the company's organization or proposed line of business is not "fair." The act also prohibits absolutely the sale of securities for thirty days after application is made to the Commission. The Commission itself is powerless to permit any sale within that period of time, no matter how urgent the needs of the corporation. Such a provision the court holds is an arbitrary and oppressive interference with the right to contract.

(2) The act constitutes a direct and substantial burden on interstate commerce in that it attempts to include in its terms business done by traveling agents or solicitors for foreign investment bankers, brokers and issuing corporations, and such burden cannot be justified under the exercise of police power.

After finding that the power of the Commissioners to forbid the sale of securities at less than what they think the proper price is a taking of property and is not within the police power, and that the act directly and substantially burdens interstate commerce, the court holds that the parts declared invalid are so interwoven in the whole purpose and operation of the statute that the entire act must fall, notwithstanding a provision in that the act itself that if any section or provision be declared invalid it should not affect any other section or part.

VACANCIES IN A BOARD OF DIRECTORS OF A MONTANA CORPORATION will not invalidate the acts of the Board if a majority of the whole Board are still in office and act in unison. The Great Falls & Teton County Railway Co. provided in its charter for five directors, the minimum number fixed by law for a railroad company. At the time of organization only three directors were elected. The Supreme Court of Montana holds that two offices of directors thereby became vacant and that so far as third parties are concerned, the acts of the three directors duly elected cannot be impeached. Great Falls & T. C. Ry. Co. v. Ganong et al., 136 Pac. 390.

THE FOREIGN CORPORATION LAW OF NEW JERSEY denies an unregistered foreign corporation the right to "maintain any action in this State upon any contract made by it in this State." In the case of Funk & Wagnalls Co. v. Max Stamm, 88 Atl. 1050, the Court held that the facts showed that the contract was executed outside of the state. The defendant had answered an advertisement of books, whereupon an agent for the plaintiff was sent from New York to call upon him and was given an order for the books addressed to the plaintiff at its New York office. The defendant agreed in the order to pay for the books on instalments, title to remain in the plaintiff until the full amount was paid. The order required that all payments, except the first, which the agent might receive, be paid to the plaintiff in New York City. The defendant made the first payment by check to the order of the plaintiff, which check and the order were duly delivered to the plaintiff in New York City by its agent. The court held that the contract was not completed until the check or order was accepted by the plaintiff in New York, for the plaintiff might have declined to receive the check or to accept the order.

IN ISSUING STOCK OF A NEW MEXICO CORPORATION FOR PROPERTY the true criterion of the value of the property is not its value for the purpose of immediate sale, nor its prospective value, but rather its actual cash value. The "actual cash value" of property is the price which it will bring in a fair market, after fair and reasonable efforts have been made to find a purchaser who will give the highest price. Dailey et al. v. Foster, 134 Pacific 206.

CAN A PROMOTER BE BOTH VENDOR AND VENDEE upon the organization of a corporation, either by selling his property to a board of which he himself is a director or to a board which he has nominated and controls? Interesting comment on this question is found in Continental Securities Co. v. Belmont, 144 N. Y. Supp. 801. The Court says: "As to the charges made that the defendant . . . controlled the incorporators and nominated and had a controlling influence over the board of directors named in the certificate of incorporation, and was at the same time the vendor and vendee . . . it may be that there was a necessity at the time of a master hand as well as a master mind for the success of the enterprise; . . . standing alone, control, nomination, or domination does not spell fraud, and further evidence than mere statement is demanded to even call for an explanation from the defendants in this action."

THE FRANCHISE TAX IN NEW YORK is computed annually upon the basis of the amount of capital stock employed by the corporation during the year ending October 31, but the statute does not necessarily contemplate computing the tax upon the amount of capital stock outstanding on October 31. In the case of a corporation which reduced its capital in the preceding July and paid no dividends after such reduction the Supreme Court of New York, Appellate Division, Third Department, held that the amount of capital stock prior to the reduction was the proper amount on which to compute the tax. The Court also held that the amount received upon the surrender of a lease (which amount had been distributed to the stockholders), over and above the amount carried on the books as the value of the lease, was a dividend within the

meaning of Sec. 182 of the Tax Law and properly considered in arriving at the rate of tax to be paid by the corporation. People v. Sohmer, 143 N. Y. Supp. 313.

PERSONAL SERVICE OF SUMMONS ON A FOREIGN CORPORATION IN NEW YORK may be made under Sec. 432 of the Code of Civil Procedure upon the managing agent of the corporation under certain circumstances. In Beck v. North Packing & Provision Co., 144 N. Y. Supp. 602, the Supreme Court, Appellate Division, First Department, held that a member of the New York Produce Exchange who acted as sales agent for a foreign corporation was not a "managing agent" within the meaning of the Code. The duties of the sales agent in this case were merely to obtain orders and transmit the same to the corporation in another state for acceptance. He had no discretion as to prices and no authority to accept orders. He occasionally purchased goods for the corporation on the floor of the Exchange, but in each case only under specific orders. The company's name appeared in the telephone and general directories, but its telephone number and address were not alleged to be the same as that of the agent. The corporation had no property in New York, and no director, officer or other person having any connection with the company, except the sales agent, lived in New York. The fact that the corporation actually received information of the service from its agent did not give the court jurisdiction.

THE NEW NEW YORK WORKMEN'S COMPENSATION LAW (Chapter 816, Laws of 1913; Chapter 67 of the Consolidated Laws) passed by the Legislature by virtue of authority vested in it so to do, contained in a constitutional amendment (Art. 1, Sec. 19) voted by the people, November 4, 1913, took effect for administrative purposes on January 1, 1914, but payment of compensation under it goes into effect on July 1, 1914. Employers and employees in forty-two specified groups of industries or occupations covering practically every branch of hazardous labor are affected by this law. An employer is required to pay for the disability or death of an employee resulting from accidental personal injury sustained by the employee arising out of and in the course of his employment, except where the injury is occasioned by the wilful intention of the injured employee to bring about the injury or death of himself or another, or when the injury results solely from the intoxication of the employee, while on duty, in which cases no liability whatsoever attaches to the employer. The employer must secure compensation to the employee in one of three ways: (1) by insuring the payment in the State Fund, (2) by insuring the payment with any stock corporation or mutual association authorized to give such insurance in the state or (3) by furnishing satisfactory proof of his financial ability to pay such compensation for himself, in which case a deposit may be required. The liability of the employer is limited to the schedule of compensations set down in the law except that if the employer has failed to secure compensation in one of the ways indicated above, the employee or his legal representative in case of the employee's death, may at his option elect to claim compensation according to said schedule or to maintain an action in the courts for damages; and in such action the fellow servant, assumption of risk and contributory negligence defenses may not be pleaded. Other than the payment of medical and surgical treatment furnished by the employer or on his refusal or neglect to so furnish after request, by the employee, no compensation is allowed for the first 14 days of disability. The obligation to furnish such treatment extends for 60 days after injury. The average weekly wages generally paid for the class of work for which the injured employee was employed is the basis for computing compensation. The compensation for permanent or temporary total disability is 66 2/3 per cent. of the weekly wages during the continuance thereof, but in the latter case limit of total payments is $3,500.00. In case of death, surviving wife or dependent husband, if there be no child under 18 years, 30 per cent. of the average wages during single state with two years' compensation

in one sum on remarriage; for each child an additional 10 per cent. until the age of 18 years, provided that the total weekly payment shall not exceed 66 2/3 per cent. of the weekly wages. If children only remain each child receives 15 per cent. of the wages of the deceased until reaching the age of 18, with a 66 2/3 per cent. limit as above. If the 66 2/3 per cent. limit is not reached other dependents are cared for up to the limit. Rates for partial disability are given. No benefits, savings or insurance of the injured employee shall be considered in determining compensation. No agreement to pay any part of the insurance premiums paid by the employer and no agreement by an employee to waive his right to compensation shall be valid. Claims for compensation may not be assigned and compensation is to be paid only to employees or their dependents.

In the hands of a State Workmen's Compensation Commission is placed the execution of the law, including the determining of rates of premiums based on hazard of employment and the total payroll and number of employees in such employment. Employers in any group may form themselves into an association with the approval of the Commission, for accident prevention.

Chapter 832 of the Laws of 1913 provides for the incorporation of Mutual Employers' Liability and Workmen's Compensation Corporations.

A FOREIGN CORPORATION IS NOT "DOING BUSINESS" IN OHIO within the meaning of either Section 178 or Section 5508 of the General Code of that state by acting as a stockholder, or giving assent as a stockholder to changes in the regulations, of an Ohio corporation. A foreign corporation incorporated for the sole purpose of acquiring, owning and holding the stock and securities of an Ohio corporation may lawfully exercise in the state of Ohio all of the incidents of such ownership, so long as it does not violate the anti-trust laws of the state. The fact that it controls the stock of an Ohio public utility company and secures the election of directors thereby does not violate the provisions of Section 614-73 General Code of Ohio, which forbids the granting or transferring to a foreign corporation of the franchises, permit, license, or right to own, operate, manage or control such utilities. Toledo Traction etc. Co. v. Smith et al., U. S. District Court, 205 Federal 643.

DIRECTORS OF AN OHIO CORPORATION are elected to serve to the next annual election after the date of their election, if elected by the stockholders. When elected at a regularly appointed annual meeting they are entitled to hold for one year and their terms of office cannot be shortened by a change of regulations (by-laws) to go into immediate effect, in which the date of the annual meeting is moved. Toledo Traction etc. Co. v. Smith, et al., supra.

LIABILITY OF INCORPORATORS IN OHIO. Under the Ohio Revised Statutes of 1906, Sec. 3244, incorporators were held liable for any deficiency in the actual payment of 10 per cent. of the authorized capital of the corporation if they proceeded to organize before that amount had been subscribed and a certificate thereof filed with the Secretary of State. This liability was in addition to their personal liability as stockholders for the stock subscribed by them. In a recent case judgment against the incorporators of an insolvent Ohio corporation was affirmed by the Supreme Court of that State under this statute. Ames et al. v. McCaughey et al., 102 N. E. 898. The Ohio General Code, 1910, has reduced the extent of this liability to "any deficiency in the actual payment of 10 per cent. on the stock subscribed for at the time of so certifying to the Secretary of State."

JURISDICTION OVER THE INTERNAL AFFAIRS OF A FOREIGN CORPORATION is not as a general rule exercised by the courts. But it is not strictly a question of jurisdiction, but rather a discretion in the exercise of jurisdiction. Except in cases involving the exercise of visitorial powers, the rule rests more upon grounds of public policy and expediency than upon jurisdictional grounds and more upon a want of

power to enforce a decree than upon jurisdiction to make it. The purpose of the rule is the protection of the foreign corporation. The defense, therefore, is available only to the corporation; it cannot be maintained as against the corporation in a proceeding brought on its behalf and at its instance. Beard v. Beard, Supreme Court of Oregon, 133 Pac. 797.

PENNSYLVANIA COURTS WILL NOT TAKE JURISDICTION of a case involving the internal management of a foreign corporation. But a foreign corporation as plaintiff may maintain an action in the courts of that state against its former officers and directors, for negligence and fraud. Although such suit involves the investigation of the affairs of the company by the court, it does not amount to an interference with the internal management of the corporation within the contemplation of the rule which denies jurisdiction to the Pennsylvania courts. Loan Society v. Eavenson et al., 241 Pa. 65.

RIGHT OF PREFERRED STOCKHOLDERS TO PREFERENCE DIVIDENDS. A stock dividend of 25 per cent. was declared by a Pennsylvania corporation payable to common and preferred stockholders alike. The preferred stockholders were entitled to cumulative semi-annual dividends of 4 per cent. each. The Supreme Court of Pennsylvania held that whether the stock dividend be regarded as a gratuity to all stockholders or as representing the value of current assets, makes no difference so far as concerns the right of the preferred stockholders to demand as a preference payment their dividends out of the net earnings. The stock dividend, paid to common and preferred stockholders alike, was not a preference payment to the latter within the terms of the contract under which the preferred stock was issued. Regardless of the stock dividend, the preferred stock holders were entitled to the payment of their accumulated dividends in cash before the stock could be redeemed, although the certificates of preferred stock seem merely to provide for the payment of "cumulative semi-annual dividends of 4 per cent. each on the par value of the stock, payable from the net earnings of the company"; the Court states that the preferred stockholders would have been entitled thereunder to equal participation in any surplus profits left over after the common stock had received dividends equal in amount to the preferred dividends. Sterling v. H. F. Watson Co., 241 Pa. 105.

A FOREIGN CORPORATION IN TENNESSEE desiring to own property or carry on business in that state, of any kind or character, must first file in the office of the Secretary of State a copy of its charter. (Shannon's Code Tenn., Secs. 2546 and 2547.) A foreign corporation which has acquired property without first complying with this statute may, however, make a valid mortgage on the same prior to such compliance if the mortgage is executed in another state. A contract made by a non-complying foreign corporation with reference to property in Tennessee is not void if entered into outside of Tennessee. Also, the transaction of a single act of business in Tennessee is not, it seems, "doing business" within the meaning of the statutory provision. In re Tennessee River Coal Co., 206 Fed. Rep. 802.

A FOREIGN CORPORATION IS "DOING BUSINESS" IN TENNESSEE when it makes contracts with theatre owners in Tennessee to book actors to play in various theatres in the state. Having failed to comply with the foreign corporation laws of the State before entering into such contracts, the foreign corporation is denied the right to enforce the contracts in the Tennessee courts. It appears that the decision in this case hinged on the fact that the contract was first signed in Illinois by the foreign corporation and then in Tennessee by the defendant, thus making it a contract entered into in the latter state and bringing it within the purview of the statute (Acts of 1895, Ch. 81). The simple expedient of having the contract signed first in Tennessee subject to acceptance in Illinois might have saved the foreign corporation in this case the sum of $1,693.86. Interstate Amusement Co. v. Albert et al., 161 S. W. 488.

A WASHINGTON CORPORATION failing to pay the annual license fee for a period of two years has its name stricken from the records of the Secretary of State and no corporation can commence or maintain an action in the courts of that state until it has paid its annual license fee last due. The fact, however, that a Washington corporation has failed to pay its license fee in the state of incorporation for a number of years does not prevent it from successfully maintaining an action in the courts of Minnesota. The Supreme Court of Minnesota holds that the provisions of the Washington Statutes referred to are penal in their nature and will not be enforced outside of the state where enacted. If the corporation were actually dissolved in its home state by proper proceedings its existence would be ended and it could not thereafter exercise any corporate functions anywhere, but the Minnesota court holds that such is not the result of the operation of the Washington Statute. Gulledge Bros. Lumber Co. v. Wenatchee Land Co., 142 N. W. 305. This case is interesting in view of the statutes generally found in the various states prescribing "forfeitures" of charters for failure to pay franchise or license taxes.

SHARES OF STOCK OF CORPORATIONS ARE EXEMPT FROM TAXATION IN WISCONSIN under the provision of Sec. 1038, Statutes 1911, which reads as follows: "The property in this Section described is exempt from taxation, to wit: . . . Par. 9. Stock in any corporation in this state which is required to pay taxes upon its property in the same manner as individuals."

The Supreme Court of Wisconsin holds that this provision applies to foreign corporations as well as domestic, if the foreign corporation is licensed to do business and has property in the state and is taxed on its property therein in the same manner as individuals are taxed. It is not necessary that all of its property be in the state. On the other hand, the fact that a foreign corporation is taxed outside of the state is not sufficient to exempt its shares held by residents of Wisconsin. State v. Leuch, 144 N. W. 290.

FIVE IMPORTANT BILLS IN CONGRESS. Following the recommendations in President Wilson's Message of January 20, 1914, five bills will be introduced at this Session with a view to eliminating monopoly from interstate commerce. The first to be introduced (H. R. 12120, Jan. 22, 1914) is a bill to create an interstate trade commission to consist of five members, whose terms of office shall be seven years, at a salary of $10,000 each. All corporations engaged in interstate commerce shall from time to time furnish the Commission information as to their organization, business, financial condition, conduct, management and relation to other companies. The Commission shall have access to all the records and papers of such corporation, and shall make public such information from time to time in such form and to such extent as it may deem necessary. The Commission may hold hearings, summon witnesses, compel the production of books, papers, contracts and documents of every kind relative to any matter under investigation. The Commission will have authority upon complaint or on its own initiative to institute investigations, to determine whether any corporation is conducting its business in violation of the Sherman Anti-trust Act and may submit its findings to the Attorney General for prosecution under the Sherman Law. The Commission may also prescribe the acts, transactions and readjustments necessary in order that an offending corporation may thereafter comply with the terms of the Sherman Law. In suits brought by the Attorney General under the Sherman Law, the court may refer to the Commission any aspect of the litigation or any proposed decree, whereupon the Commission shall investigate the question and report its findings to the Court. An annual report is to be made to Congress. The present Bureau of Corporations is to be merged into and become a part of the new Commission. After hearings on this bill it is likely that

a new bill embodying the results of the hearing will be introduced to take its place. The other four bills have not yet been introduced, but three have been prepared in "tentative" form and hearings will be held to ascertain public opinion of their provisions before they are introduced. They are:

(1) An act adding five sections to the Sherman Law prohibiting discrimination in prices between different sections or communities, prohibiting arrangements for the exclusive sale of one product by dealers, providing that a decree in one suit against a corporation for violation of the anti-trust law shall be conclusive as to the same issues of law in favor of any other party against the same defendant under the same law, and suspending the statute of limitations during the pendency of a suit under the anti-trust act by the United States against any corporation so far as it affects any one who at the time or previous to the institution of the suit had a cause of action against the corporation under the contract; and to permit injunctive relief under the act.

(2) A bill which defines four definite offenses which shall be included within the terms of the Sherman Anti-Trust Law. They are:

First. To create or carry out restrictions in trade or to acquire a monopoly in any interstate trade, business or commerce.

Second. To limit or reduce the production or increase the price of merchandise or of any commodity.

Third. To prevent competition in manufacturing, making, transporting, selling, or purchasing of merchandise, produce or any commodity.

Fourth. To make any agreement, enter into any arrangement, or arrive at any understanding by which they, directly or indirectly, undertake to prevent a free and unrestricted competition among themselves or among any purchasers or consumers in the sale, production, or transportation of any product, article, or commodity.

This act further prescribes a penalty for doing any of the prohibited acts and provides that whenever any corporation shall do any of such acts the offense shall be deemed to be also that of the individual directors, officers and agents of the corporation authorizing, ordering or doing any of such prohibited acts. A paragraph dealing with holding companies is to be added to this act.

(3) A bill to prevent interlocking directorates. This bill is not to go into effect until two years after its approval. It prohibits any person engaged as an individual or as a member of a partnership or as an officer of a corporation in manufacturing or selling railroad equipment or structural steel or mining or selling coal or conducting a bank or trust company, from being a director, officer or employee of a railroad or public service corporation doing an interstate business. It also aims to prevent any person from being director in two or more banks when one of such banks is a national bank or member of any federal reserve bank and provides that when any two or more corporations engaged in interstate or foreign commerce shall have a common director, that fact shall be conclusive evidence that there exists no real competition between the corporations, and if such corporations are natural competitors, such common directorship shall constitute a combination in violation of the Sherman law.

The fourth bill which is yet to be drafted will deal with the power of the Interstate Commerce Commission to superintend and regulate the financial operations by which the railroads are henceforth to be supplied with money.

Our Legislative Department is prepared to report on the introduction and progress of these and other bills in Congress. This Department is, as usual, following legislation in the states whose legislatures are or will be in regular or special session this year. The service covers every subject relating to business. Anyone interested may obtain full information by writing any of our offices. We have prepared a small folder giving the names of the states whose legislatures convene this year and the dates of convening, which will be sent to anyone on request.

Our Bureau of Information

Our Bureau of Information is maintained, for the benefit and assistance of attorneys, to answer questions relating to the statutory requirements imposed upon foreign and domestic corporations by the various states and the provinces of Canada.

No charge is made for answering questions as to the statutory requirements imposed upon foreign corporations as a prerequisite to "doing business" in any jurisdiction, the cost of obtaining licenses to do business, the rates of entrance fees or annual license fees or franchise taxes, statutory penalties or disabilities for "doing business" without license, etc.

Similarly, information is furnished as to the cost of incorporation, statutory requirements as to number and qualifications of incorporators and directors, as to corporate names, franchise taxes, etc.

Our collection of data on these subjects is at the service of all Members of the Bar. We believe its use by our friends will save them time and effort. If it results in closer business relations, we shall be pleased, but the service is not offered with a view to placing any obligation whatever upon attorneys whom we may have the pleasure of serving.

THE CORPORATION TRUST COMPANY

FIGURES COUNT

In 1913, 1606 Corporations Were Organized Under the Laws of Delaware

An Analysis of the Year's Statistics Shows:

(A)

More corporations were organized in Delaware than in any other state (excluding corporations for purely local purposes).

(B)

More corporations were organized through The Corporation Trust Company than by any other agency.

A Corporation Act which attracts the attention of more corporation lawyers than any other Act must present marked advantages.

As attorney, you should be familiar with the salient features of the Corporation Act of Delaware.

A copy of the law and our pamphlet entitled, "Business Corporations Under the Laws of Delaware," are sent free to attorneys upon request addressed to any of our offices.

Don't wait until you have immediate need for this information—get it now.

Counsel for a great majority of the large important corporations organized during the year employed our services.

Counsel for a very large proportion of the smaller corporations also used our facilities.

The reasons are: We do business with attorneys only.

Our fees are as low as is consistent with the quality of the services we perform.

Our facilities are recognized by attorneys all over the country as the best.

The Corporation Trust Company

KENNETH K. McLAREN, President

SYSTEM

37 Wall Street, New York
511 Exchange Building, Boston
(Corporation Registration Co.)
281 St. John Street, Portland, Me.
394 Du Pont Bldg., Wilmington, Del.
(Corporation Trust Co. of America)
1639 Oliver Building, Pittsburgh
112 West Adams Street, Chicago
15 Exchange Place, Jersey City
1428 Land Title Bldg., Philadelphia
922 New Bank of Commerce Bldg., St. Louis
501 Colorado Bldg., Washington, D. C.
304 Market Street, Camden, N. J.

V 1 4 3 DEC 13

XUM